

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LISA SALVATO

Plaintiff,

V.

**LIEUTENANT THOMAS SMITH,
CAPTAIN JOHN DARBY, and
CITY OF PHILADELPHIA**

Defendants.

CIVIL ACTION

NO: 13-cv-2112

PLAINTIFF'S FIRST AMENDED COMPLAINT

I. INTRODUCTION

1. Plaintiff brings this civil action seeking all relief provided under the law including but not limited to compensatory, consequential, nominal, and punitive damages, reasonable attorney fees, litigation costs, and equitable relief.

2. The relief sought is provided under the Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e, et seq.), and the comparable state law, Pennsylvania Human Relations Act (43 P.S. § 951-963 et seq.), for the denial of equal employment terms and conditions because of Plaintiff's sex and/or race, and/or retaliation for opposing perceived sex and/or race discrimination.

3. The Defendants at all times related to the claims knew or were on notice that their conduct would result or likely result in a deprivation of employment rights, and that their conduct would subject them to liability under Title VII (42 U.S.C. §2000(e) et seq.), and the comparable Pennsylvania Human Relations Act (43 P.S. § 951-963 et seq.).

4. As is more fully set forth below, Defendants for all times related to the claim acted as aiders and abettors of the City of Philadelphia's policy to discrimination against

employees based on sex and/or race or to retaliate against employees for opposing perceived sex and/or race employment discrimination.

II. JURISDICTION / VENUE

5. Jurisdiction for the District Court to hear this action is afforded to the District Court pursuant to 28 U.S.C. § 1331 (Federal Question), Title VII (42 U.S.C. 2000e et seq.), and 28 U.S.C. § 1343 (3) and (4) (Civil Rights).

6. Venue properly lies in the United States District Court for the Eastern District of Pennsylvania because the cause of action herein pleaded occurred in Philadelphia County which is located in the venue established for the District Court for the Eastern District of Pennsylvania. Plaintiff's invoke supplemental jurisdiction under 28 U.S.C. § 1367 so the District Court can resolve the state pendent claims.

III. PARTIES

7. Plaintiff, LISA SALVATO (herein after Plaintiff) is a resident of and has domicile in the County of Philadelphia, Pennsylvania; she is an employee as intended under Title VII (42 U.S.C. § 2000(e)).

8. Defendant, LIEUTENANT THOMAS SMITH, (herein after Defendant "Lt. Smith") is a resident of and has domicile in the County of Philadelphia, Pennsylvania; he is a supervisor with control and authority over Plaintiff terms and conditions of employment with the PPD.

9. Defendant, CAPTAIN JOHN DARBY, (herein after Defendant "Capt. Darby") is a resident of and has domicile in the County of Philadelphia, Pennsylvania; he is a supervisor with control and authority over Plaintiff's terms and conditions of employment with the PPD.

10. Defendant, the CITY OF PHILADELPHIA (herein after Defendant, City) is a municipal entity that exists and acts only pursuant to state law; it is an employer of Plaintiff as intended under 42 U.S.C. § 2000(e) and employs more than 500 people.

IV. FACTS

11. Plaintiff was hired by the Philadelphia Police Department on June 25, 1995. Plaintiff's protected class is White, female.

12. She was promoted to the rank of Detective on December 28, 2005 and assigned to the Special Victims Unit ("SVU") – *Administrative squad*, in February 2006. Her shift in SVU - Administrative squad was 7am x 3pm Monday through Friday.

13. Plaintiff has a daughter, who is presently 10 years old with special needs and ADHD. Plaintiff's supervisors in SVU were made aware of and had knowledge of these child care issues; Lt. Thomas Smith (White, male); Capt. John Darby (White, male).

14. Lt. Thomas Smith transferred into SVU in November 2010.

15. In April 2012, Lt. Smith began making inappropriate comments and harassing Plaintiff; constantly asking her why she was away from her desk, and calling her nicknames like "gabbygail" and "spankasauras".

16. In April 2012 Plaintiff complained to Capt. Darby about the comments by Lt. Smith. Capt. Darby replied "I don't deal with personal issues" and that he has "Lieutenants to deal with those issues", and did not discuss the matter further.

17. On April 20, 2012 the PPD was hosting an "instructor development" course, which Plaintiff was denied attending by Capt. Darby. This training, although not mandatory, would have allowed Plaintiff to become an MPO (Municipal Police Training) instructor.

18. Throughout May 2012 the comments by Lt. Smith continued.

19. In June 2012 Plaintiff received a phone call from her daughters school but Lt. Smith would not allow her to take the "personal call" while on duty. Other officers were allowed to take personal phone calls while on duty, specifically; P/O Denise Holmes (Black, female) takes personal calls from children; Detective Valarie Miller (Black, female) does

homework; P/O Janet Jones (Black, female) takes calls from children; **P/O Mike O'Brien (White, male) takes calls from family*; Lt. Smith(White, male) takes calls from children.

20. In mid June 2012 **Lt. Smith began documenting when Plaintiff logged in and out of work**, but did not do this for any other officers in SVU. Within SVU – Administration, Plaintiff and P/O Andrea Alexander were the only two White females. P/O Alexander was retiring in November 2012.

21. Around June 14, 2012 **Plaintiff asked Lt. Smith to be transferred from the 7am x 3pm shift to a steady 8am x 4pm shift because of child-care issues but was denied.** P/O Mike O'Brien also has a child with special needs and was allowed to change his shift from line-squad to a steady shift Monday through Friday. He was accommodated by being allowed to work as an investigator 8am x 4pm and 10am x 6pm alternating weeks. P/O Janet Jones (Black, female) also has child care issues and she was accommodated by being allowed to changed her shift form 8am x 4pm to 7am x 3pm. Detective Valarie Miller (Black, female) also has child care issues because she is a single parent, and was allowed to change her hours to steady day work to accommodate her situation. P/O Denise Holmes (Black, female) was also allowed to change her work hour from 8am x 4pm to 7am x 3pm because of child care issues.

22. Plaintiff is aware of another White female, P/O Clare Duckworth, who was assigned to Child Abuse and asked to be placed on a steady shift due to a medical disability but was **denied**.

23. On **July 4, 2012, Plaintiff was assigned to work in the file room boxing documents.** Plaintiff was treated differently than other officers because she is not aware of any other female officer who was assigned to work in the file room; in Lt. Smith's time in SVU he would only ask male officers to work in the file room because it involved heavy lifting.

24. After working in the file room, Plaintiff developed a respiratory infection due to there being a buildup of mold in the room. On July 5th Plaintiff called out sick; she spoke to Lt.

Biello who confirmed the mold buildup in the file room. Plaintiff remained out of work until July 11, 2012 due to the respiratory infection. She contacted Lt. Biello and informed him that she would be out sick, and produced doctor's notes upon her return.

25. While **Plaintiff was out sick she was "sick-checked" 3 times in 6 days.** All other officers in the administrative squad who were able to be sick-checked are Black, and none of the Black officers were sick-checked when they called out sick. Plaintiff is aware that P/O Janet Jones (Black, female) was out for 5 weeks due to an auto accident and was not sick-checked once. Plaintiff is aware of this information because she works in administration and all sick-checks must be documented through this squad; Plaintiff would have directly been notified of the sick-check paperwork.

26. On July 11, 2012 when she returned, **Lt. Smith issued her a warning letter for violations of Directive #66 (Sick policy) and was not paid for 3 days of work. The warning was put in her "personnel file"** (*not* the command file at SVU) which would now effect her transfer request, promotions, and benefits of employment. Plaintiff filed a grievance with the FOP for not being paid for 3 days of work.

27. On July 16, 2012 Plaintiff filed a complaint with the EEO Unit, for Lt. Smith's actions of name calling, and discriminatory treatment regarding child care issues and monitoring her sick time. IAB conducted an investigation into the allegations. (Plaintiff's EEO case was headed by Inspector Jerald Bates). Both Capt. Darby and Lt. Smith were notified about Plaintiff's EEO complaint and IAB investigation.

28. On **July 25, 2012 Plaintiff was called into Capt. Darby's office and reassigned from administrative squad (5-squad) to 1-squad; a rotating shift working 8 x 4 and 4 x 12.** The reason given was that Plaintiff was "unreliable" and "called out sick" too often. However, Plaintiff's performance evaluations are all satisfactory and do not reflect these complaints. Plaintiff grieved the reassignment with the FOP because she was not given

adequate notice. **Plaintiff still encounters Lt. Smith when working the 4 x 12 shift but.** (1-squad supervisors are Sgt. Joseph Ryan and Lt. Anthony Mirabella).

29. ***After assigning Plaintiff to 1-squad Capt. Darby has made disparaging comments about Plaintiff to other officers and her supervisors, Sgt. Ryan and Lt. Mirabella, such as telling them to “watch out for Plaintiff”, that Plaintiff was a “bad influence”, and to “not let her sit near other officers”.**

30. On July 25, 2012 a cleaning crew was called to remove the mold from the file room.

31. On July 25, 2012 Plaintiff reported to the Employee Assistance Program because of the extreme hardship with her new assignment.

32. From August 5th to the 7th, 2012 Plaintiff was **admitted to Jean’s Hospital** for stress related symptoms such as vomiting, severe stomach pains, and intestinal deterioration.

33. On September 24, 2012, Plaintiff submitted transfer requests to Captain Darby for the following Units; Major Crimes, Criminal Intelligence, and Gun Permits. The requests were submitted to the Transfer Review Board and approved by the Commanding Officers of the respective units, and subsequently Plaintiff was placed on the transfer eligibility list. **Plaintiff has not yet been approved by the Commission for a transfer.**

34. On **October 24, 2012, Plaintiff submitted a request to be moved to the steady “last-out” shift (12am x 8am)** for child care issues, because there were no open day-work positions, and also to remove herself from Lt. Smith. On October 31, 2012, her request was **disapproved** by Capt. Darby due to “staffing” reasons. Lt. Albert Rossi allegedly told Capt. Darby that he did not want Plaintiff on his shift. Plaintiff has knowledge that Lt. Rossi and Lt. Smith are good friends within the Department and that Lt. Rossi allegedly had knowledge of Plaintiff’s complaints against Lt. Smith. Capt. Darby assigned two officers with less seniority than Plaintiff to the last-out shift. (Christopher Brennan, (White male) and Kimberly Organ (Black female)).

35. On November 5, 2012 Plaintiff filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging violations of Title VII for race and sex discrimination and retaliation for opposing such behavior. Plaintiff has waited the required statutory time and has requested the EEOC issues her a Right-to-Sue.

36. On December 5, 2012 a memo was dispersed that there was an **open position for a "Compstat" officer**. The memo was dispersed on Plaintiff's regular day off so she would not get the opportunity to apply for the position. Plaintiff is qualified for the position because she had trained for the past five (5) years with the outgoing Compstat officers. This position was ultimately filled by Cpl. Lisa Moss (Black, female), who is of equal rank as Plaintiff but less experience.

37. Also, in December 2012, a memo was dispersed that there were two **open positions for officers in the Child Abuse section**. The memo was dispersed on Plaintiff's regular day off so she would not get the opportunity to apply for the position. Plaintiff is qualified for the position because she was previously assigned to Child Abuse from 2007 until 2008. The two open positions were awarded to two officers with less seniority and who had less experience in Child Abuse than Plaintiff; (Patricial Everheart (White, female) and Linda Blowes (White, female).

38. **January 2013, Plaintiff was denied overtime** for her assigned case. Capt. Darby reassigned the case to another investigator; Manny Gonzalas (Hispanic male).

39. On **February 21, 2013 Lt. Smith threatened to not give Plaintiff overtime for court** because the court records were not filled out correctly. Lt. Smith had never threatened to deny Plaintiff overtime prior to her complaint with the EEO Unit and with EEOC.

40. To date Plaintiff remains under the supervising authority of Capt. Darby despite her efforts to complain of **their discriminatory, harassing and retaliatory treatment and to be transferred out of SVU. Defendants have failed to take prompt and appropriate action**

to remove Plaintiff from her harassers or take any corrective action. Plaintiff still encounters Lt. Smith for administrative issues, and he remains her indirect supervisor.

41. Plaintiff's damages include; hospitalization for high blood pressure; treatment for respiratory infection, loss of sleep for which she is now taking prescription Sonesta; anxiety for which she is now taking prescribed Zanax; increased cost for child care due to working a rotating shift; a permanent disciplinary letter in her personnel file; and loss of 3 days pay.

NEW FACTS:

42. On or about April 17, 2013, Plaintiff was told via Capt. Darby to attend a "mandatory" training course for filling out warrants. Plaintiff did not attend due to a lack of personnel, but was later informed that the training was not mandatory. Plaintiff alleges that Capt. Darby purposely said the training was mandatory to scare Plaintiff for not attending.

43. On April 19, 2013 Plaintiff filed this lawsuit and served it upon Defendants. (ECF Documents #1 and #2).

44. ***On June 8, 2013, Plaintiff was working on a case and received a phone call from Capt. Darby who verbally reprimanded her for allegedly calling the victim a liar and threatening to arrest them. This treatment was discriminatory, retaliatory and adverse because Capt. Darby normally addresses the investigators' supervisor not the investigators themselves, but here, Darby went directly to Plaintiff even though her supervisor (Lt. Mirabella) was available. He then threatened to start an internal investigation against both Plaintiff and Sgt. Ryan for not handling the case properly.**

45. On July 6 2013, Plaintiff became ill at work with symptoms of nausea and a headache. She was taken to Episcopal hospital by ambulance (EMS from the Fire Department) and treated for hypertension.

46. On or about August 14, 2013, another investigator P/O Beverly Graham (Black female) complained to Capt. Darby that she was being assigned too many cases and that

Plaintiff was given special treatment, because she was “sick” and “filed a lawsuit”, and because “everyone is scared of her”. Capt. Darby took no action in response to these comments.

47. *On or about August 9, 2013 P/O Graham told Capt. Darby that Plaintiff had been hospitalized (§45). **Capt. Darby and Lt. Smith then pulled Plaintiff's ambulance records from EMS with the help of Lt. Edward Lendvay.** SVU personnel are only allowed to request EMS records if related to a case; for Plaintiff's records to be released Plaintiff would have to sign a release. On August 12, 2013 Lt. Mirabella, via Capt. Darby, instructed Plaintiff to report to the City Medical Center (19th and Fairmount) to be medically cleared for duty. Plaintiff reported to the Medical Center and was cleared. Capt. Darby then requested counseling be issued to Plaintiff for not being medically cleared directly following her hospitalization. The correct procedure for this offense is a verbal warning, and Lt. Mirabella received formal discipline (75-18) for not counseling Plaintiff.

48. On September 19, 2013, Plaintiff overheard P/O Graham talking to another officer in the operations room, accusing Plaintiff of only taking the jobs she “wanted” and referred to her as “that White bitch”. Plaintiff believes that Sgt. Ryan and Lt Mirabella also overheard P/O Graham's conversation. Plaintiff complained to Sgt. Ryan the next day regarding P/O Graham's comments and Graham was supposedly counseled. An investigation ensued and it was determined that the cases were being distributed fairly to the investigators.

49. *In September 2013 after being hospitalized for hypertension (§§ 45, 46, 47), **Plaintiff was counseled by Lt. Mirabella at the request of Capt. Darby.** However, other employees in SUV have had medical issues that would require them to be medically cleared and they were not required to do so. *In 2011, P/O Leslie Rhodes (B/F) had knee surgery and was told by Lt Smith to just use vacation time so that she would not have to go to 19th and Fairmount. P/O Ray Carrasquillo was known to be on dialysis by Lt Smith and Lt Stephen Biello but not required to be medically cleared for duty.

50. On September 19, 2013, while Plaintiff was conducting an investigation, the alleged offender stated to Plaintiff that he “looked her up on line” and can see that she “doesn’t get along with Black people”. He also made references to the current lawsuit and to her home address. Plaintiff reported this to Sgt Ryan, Lt Mirabella and FOP representative Bob Ballentine. In response, Capt. Darby ordered Plaintiff to write a memo listing the comments made by the offender and any relation to the lawsuit. Plaintiff informed Sgt. Ryan that she would like to speak with her attorney before writing the memo.

51. On September 20, 2013 Plaintiff reported to the Employee Assistance Program (EAP) regarding the offender’s comments. Capt. Darby then requested that Internal Affairs (IAD) conduct an investigation into the offender’s comments and that Sgt. Ryan notify EEO Unit.

52. On September 26, 2013 Plaintiff filed a second charge with the EEOC alleging additional discrimination and retaliation for filing the current lawsuit.

V. CHARGES

COUNT I
Employment Discrimination/Retaliation/Hostile Work Environment
Title VII 42 U.S.C. § 2000e
Salvato v. City of Philadelphia

53. Plaintiff incorporates the preceding paragraphs hereto and as though each were repeated verbatim.

54. Defendants discriminated against Plaintiff based on her protected class, female, created a hostile work environment, and retaliated against her for opposing actions perceived to be in violation of Title VII (42 USC 2000e).

55. Plaintiff engaged in the following *protected activity under Title VII*; a) In April 2012 Plaintiff complained to Capt. Darby about the comments by Lt. Smith; b) On July 16, 2012 Plaintiff filed a complaint with the EEO Unit, for Lt. Smith’s actions of name calling, and discriminatory treatment regarding child care issues and monitoring her sick time; c) On November 5, 2012 Plaintiff filed a complaint with the Equal Employment Opportunity

Commission (EEOC) alleging violations of Title VII for race and sex discrimination and retaliation for opposing such behavior; and **on April 19, 2013 filed a federal lawsuit and served it on Defendants.**

56. Both prior to and subsequent to Plaintiff's protected activity Defendants *discriminated* against Plaintiff as outlined above. Further, Defendants *retaliated* against her for engaging in such protected activity. These discriminatory and retaliatory actions include but are not limited to the following:

- a) In April 2012 and continuing until Plaintiff's transfer, Lt. Smith began making inappropriate and harassing comments;
- b) On April 20, 2012 the PPD was hosting an "instructor development" course, which Plaintiff was denied attending by Capt. Darby;
- c) Lt. Smith would not allow her to take the "personal call" while on duty;
- d) In mid June 2012 Lt. Smith began documenting when Plaintiff logged in and out of work;
- e) Around June 14, 2012 Plaintiff asked Lt. Smith to be transferred from the 7am x 3pm shift to a steady 8am x 4pm shift because of child-care issues but was denied;
- f) On July 4, 2012, Plaintiff was assigned to work in the file room boxing documents.
- g) After working in the file room, Plaintiff developed a respiratory infection and was out of work from July 5th until July 11th, 2012. While Plaintiff was out sick she was "sick-checked" 3 times in 6 days;
- h) On July 11, 2012 when she returned, Lt. Smith issued her a warning letter for violations of Directive #66 (Sick policy) and was not paid for 3 days of work;
- i) On July 25, 2012 Plaintiff was called into Capt. Darby's office and reassigned from administrative squad (5-squad) to 1-squad; a rotating shift working 8 x 4 and 4 x 12;
- j) On October 24, 2012, Plaintiff's request to be moved to the steady 12am x 8am shift, for child care issues, was disapproved by Capt. Darby;
- k) In December 2012, open positions for a "Compstat" officer, and for an officer in the Child Abuse section became available. Plaintiff is qualified, and applied, for

the each position but did not get selected;

- l) In January 2013, Lt. Smith denied Plaintiff over time for a case to which she was assigned and in February 2013 threatened to not give her overtime for court.
- m) ***After assigning Plaintiff to 1-squad Capt. Darby has made disparaging comments about Plaintiff to other officers and her supervisors, Sgt. Ryan and Lt. Mirabella, such as telling them to "watch out for Plaintiff", that Plaintiff was a "bad influence", and to "not let her sit near other officers".**
- n) ***On June 8, 2013, Capt. Darby verbally reprimanded regarding an investigation. This treatment was discriminatory, retaliatory and adverse because Capt. Darby normally addresses the investigators' supervisor not the investigators themselves. He then threatened to start an internal investigation against both Plaintiff for not handling the case properly;**
- o) ***Capt. Darby and Lt. Smith then pulled Plaintiff's ambulance records from EMS with the help of Lt. Edward Lendvay;**
- p) ***In September 2013 Capt. Darby counseled Plaintiff for not being medically cleared directly following her hospitalization.**

57. The substantial and/or motivating reason for the above mentioned adverse actions was the Plaintiff's race and/or sex and/or opposition to perceived violations of Title VII. As detailed above, Plaintiff was treated differently than similarly situated officers outside of her protected class. For example, other officers were allowed to take personal phone calls while on duty, specifically; P/O Denise Holmes (Black, female) takes personal calls from children; Detective Valarie Miller (Black, female) does homework; P/O Janet Jones (Black, female) takes calls from children; P/O Mike O'Brien (White, male) takes calls from family; Lt. Smith (White, male) takes calls from children. Another example is that P/O Mike O'Brien has a child with special needs and was allowed to change his shift from line-squad to a steady shift Monday through Friday. Similarly, P/O Janet Jones (Black, female) also has child care issues and she was accommodated by being allowed to changed her shift form 8am x 4pm to 7am x 3pm. Also, Detective Valarie Miller (Black, female) also has child care issues because she is a single parent, and was allowed to change her hours to steady day work to accommodate her

situation; and P/O Denise Holmes (Black, female) was also allowed to change her work hour from 8am x 4pm to 7am x 3pm because of child care issues. (See paragraphs 11-39).

58. The above mentioned conduct was so pervasive that a reasonable person in Plaintiff's position would find the work environment to be hostile. Defendants treatment was severe and pervasive, and has continued for over a year (April 2012 until the present). Such behavior affected Plaintiff's ability to do her job and caused her to suffer physical damages, including; hospitalization for the respiratory infection, loss of sleep for which she is now taking prescription Sonesta; and anxiety for which she is now taking prescription Zanex.

59. Defendants failed to take prompt and appropriate action to remedy the situation; specifically, to this date, Plaintiff remains under the supervising authority of Lt. Smith and Capt. Darby despite her efforts to complain of their discriminatory, harassing and retaliatory treatment and to be transferred out of SVU. Defendants have failed to take prompt and appropriate action to remove Plaintiff from her harassers or take any corrective action.

60. The City of Philadelphia has a policy and/or practice, or condones and/or acquiesces to discrimination in employment terms and conditions because of race/sex, and/or retaliation for opposing race/sex discrimination in violation of Title VII (42 U.S.C. 2000(e) et seq.).

61. Defendants, Lt. Smith and Capt. Darby, have supervisory authority over Plaintiff's employment terms and conditions, overtime pay, tour of duty, hours of employment, and discipline. Defendant as a supervisor carried out the City's policy of employment discrimination and retaliation.

62. On November 5, 2012 Plaintiff filed a complaint with the EEOC alleging violations of Title VII for race and sex discrimination and retaliation for opposing such behavior. Named within the charge are Lt. Smith, Capt. Darby and the City of Philadelphia Police Department, so as to put the *City* of Philadelphia on notice of potential liability under the

employment discrimination laws of the United States and Commonwealth of Pennsylvania and under federal law for a “cat’s paw” theory of liability.

63. Plaintiff has exhausted her administrative remedies by allowing the EEOC 180 days of jurisdiction to investigate the claim, and has requested a “Right-to-Sue” letter from the Department of Justice, which allows her to bring this action in a federal court of law.

COUNT II

Employment Discrimination/Retaliation/Hostile Work Environment
Pennsylvania Humans Relations Act - 43 P.S. §§ 951 – 963
Salvato v. City of Philadelphia, Lt. Smith, Capt. Darby

64. Plaintiff incorporates the preceding paragraphs hereto and as though each were repeated verbatim.

65. Defendants discriminated against Plaintiff based on her protected class, female, created a hostile work environment, and retaliated against her for opposing actions perceived to be in violation of the Pennsylvania Humans Relations Act - 43 P.S. §§ 951-963.

66. Plaintiff engaged in the following *protected activity under the PHRA*; a) In April 2012 Plaintiff complained to Capt. Darby about the comments by Lt. Smith; b) On July 16, 2012 Plaintiff filed a complaint with the EEO Unit, for Lt. Smith’s actions of name calling, and discriminatory treatment regarding child care issues and monitoring her sick time; c) On November 5, 2012 Plaintiff filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging violations of Title VII for race and sex discrimination and retaliation for opposing such behavior; and **on April 19, 2013 filed a federal lawsuit and served it on Defendants.**

67. Both prior to and subsequent to Plaintiff’s protected activity Defendants *discriminated* against Plaintiff as outlined above. Further, Defendants *retaliated* against her for engaging in such protected activity. These discriminatory and retaliatory actions include but are not limited to the following:

- a) In April 2012 and continuing until Plaintiff's transfer, Lt. Smith began making inappropriate and harassing comments;
- b) On April 20, 2012 the PPD was hosting an "instructor development" course, which Plaintiff was denied attending by Capt. Darby;
- c) Lt. Smith would not allow her to take the "personal call" while on duty;
- d) In mid June 2012 Lt. Smith began documenting when Plaintiff logged in and out of work;
- e) Around June 14, 2012 Plaintiff asked Lt. Smith to be transferred from the 7am x 3pm shift to a steady 8am x 4pm shift because of child-care issues but was denied;
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- h) On July 11, 2012 when she returned, Lt. Smith issued her a warning letter for violations of Directive #66 (Sick policy) and was not paid for 3 days of work;
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- j) On October 24, 2012, Plaintiff's request to be moved to the steady 12am x 8am shift, for child care issues, was disapproved by Capt. Darby;
- k) In December 2012, open positions for a "Compstat" officer, and for an officer in the Child Abuse section became available. Plaintiff is qualified, and applied, for the each position but did not get selected;
- l) In January 2013, Lt. Smith denied Plaintiff over time for a case to which she was assigned and in February 2013 threatened to not give her overtime for court;
- m) ***After assigning Plaintiff to 1-squad Capt. Darby has made disparaging comments about Plaintiff to other officers and her supervisors, Sgt. Ryan and Lt. Mirabella, such as telling them to "watch out for Plaintiff", that Plaintiff was a "bad influence", and to "not let her sit near other officers".**
- n) ***On June 8, 2013, Capt. Darby verbally reprimanded regarding an investigation. This treatment was discriminatory, retaliatory and adverse**

because Capt. Darby normally addresses the investigators' supervisor not the investigators themselves. He then threatened to start an internal investigation against both Plaintiff for not handling the case properly;

- o) *Capt. Darby and Lt. Smith then pulled Plaintiff's ambulance records from EMS with the help of Lt. Edward Lendvay;**
- p) *In September 2013 Capt. Darby counseled Plaintiff for not being medically cleared directly following her hospitalization.**

68. The substantial and/or motivating reason for the above mentioned adverse actions was the Plaintiff's race and/or sex and/or opposition to perceived violations of the PHRA. As detailed above, Plaintiff was treated differently than similarly situated officers outside of her protected class. For example, other officers were allowed to take personal phone calls while on duty, specifically; P/O Denise Holmes (Black, female) takes personal calls from children; Detective Valarie Miller (Black, female) does homework; P/O Janet Jones (Black, female) takes calls from children; P/O Mike O'Brien (White, male) takes calls from family; Lt. Smith (White, male) takes calls from children. Another example is that P/O Mike O'Brien has a child with special needs and was allowed to change his shift from line-squad to a steady shift Monday through Friday. Similarly, P/O Janet Jones (Black, female) also has child care issues and she was accommodated by being allowed to changed her shift form 8am x 4pm to 7am x 3pm. Also, Detective Valarie Miller (Black, female) also has child care issues because she is a single parent, and was allowed to change her hours to steady day work to accommodate her situation; and P/O Denise Holmes (Black, female) was also allowed to change her work hour from 8am x 4pm to 7am x 3pm because of child care issues. (See paragraphs 11-39).

69. The above mentioned conduct was so pervasive that a reasonable person in Plaintiff's position would find the work environment to be hostile. Defendants' treatment was severe and pervasive, and has continued for over a year (April 2012 until the present). Such behavior affected Plaintiff's ability to do her job and caused her to suffer physical damages, including; hospitalization for the respiratory infection, loss of sleep for which she is now taking

prescription Sonesta; and anxiety for which she is now taking prescription Zanex.

70. Defendants failed to take prompt and appropriate action to remedy the situation; specifically, to this date, Plaintiff remains under the supervising authority of Lt. Smith and Capt. Darby despite her efforts to complain of their discriminatory, harassing and retaliatory treatment and to be transferred out of SVU. Defendants have failed to take prompt and appropriate action to remove Plaintiff from her harassers or take any corrective action.

71. The City of Philadelphia has a policy and/or practice, or condones and/or acquiesces to discrimination in employment terms and conditions because of race/sex, and/or retaliation for opposing race/sex discrimination in violation of Title VII (42 U.S.C. 2000(e) et seq.).

72. Defendants, Lt. Smith and Capt. Darby, have supervisory authority over Plaintiff's employment terms and conditions, overtime pay, tour of duty, hours of employment, and discipline. Defendant as a supervisor carried out the City's policy of employment discrimination and retaliation.

73. On November 5, 2012 Plaintiff filed a complaint with the EEOC alleging violations of Title VII for race and sex discrimination and retaliation for opposing such behavior. Named within the charge are Lt. Smith, Capt. Darby and the City of Philadelphia Police Department, so as to put the individuals Defendants no notice of potential liability under the employment discrimination laws of the United States and Commonwealth of Pennsylvania and under federal law for "aider and abettor" theory of liability.

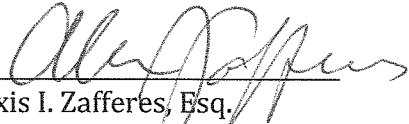
74. Plaintiff has exhausted all of her administrative remedies by allowing the EEOC 180 days of jurisdiction to investigate the claim, and had requested a Right-to-Sue letter from the Department of Justice, which allows her to bring this action in a federal court of law.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the Court enter judgment for them and against the Defendants; to hold the Defendants jointly and severally liable; to award the Plaintiff such relief as to make Plaintiff whole, including such relief as, but not limited to, compensatory, consequential and punitive damages, front and back pay, negative tax consequence relief, reasonable attorney fees, litigation costs, and any and all other such relief, including equitable relief, allowed by law or that the Court deems proper and just. Including declaring the Defendants acts, actions or omissions to have violated the Plaintiffs' rights, the policy, practice or custom unconstitutional, overly broad or sweeping, and to enjoin the City and its employees from aiding or abetting the policy, practice and custom declared unconstitutional.

Date: September 27, 2013

Respectfully submitted,

BY 
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